FILED
July 01, 2004
Cathy A. Catterson, Clerk
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ITTELLA FOODS, INC.,
Plaintiff - Appellee,
v.
ZURICH INSURANCE COMPANY,
Defendant,
and,
NORTHERN INSURANCE CO. OF NEW YORK,
Defendant - Appellant.

No. 02-56383
D.C. No. CV-01-03620-LGB
Central District of California, Los Angeles

ORDER

Before: D.W. NELSON, FERNANDEZ, and KLEINFELD, Circuit Judges

We deny the petition for rehearing of appellant Northern Insurance. The memorandum disposition will not be amended because the only relief at issue in this case is the punitive damages award. Appellant conceded that it was not seeking to recover any money paid on the policy for which bad faith was claimed. In addition, counsel advised us that a separate appeal regarding attorneys' fees (03-55111) was filed,

mediated, and settled. The settlement assumed that our appeal would decide the issue of bad faith, but that decision was unnecessary to our resolution of the appeal before us. That the issue of bad faith was briefed, and that the parties assumed (in their settlement agreement for a separate appeal on attorneys' fees) that this panel would decide the issue, do not make that issue necessary for decision.

We deny the petition for rehearing of appellee Ittella Foods.

Judge Kleinfeld has voted to deny appellee's petition for rehearing en banc, and Judges D. Nelson and Fernandez have recommended the same.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on the petition for rehearing en banc. Fed R. App. P. 35(b).

The petitions for rehearing and the petition for rehearing en banc are DENIED.